

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22734 of 2018

Manoj Kumar @ Munna Jaiswal, Son of Sri Gopal Prasad, Resident of Village- Bakhtiyarpur, P.S.- Bakhtiyarpur, District- Patna. At present residing at Kaimashikoh, Jhauganj, Patna City, P.S.- Chowk Patna City, District- Patna, Original Resident of Village- Ismilganj, District- Luckhnow U.P..

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Addl. Chief Secretary-cum- President, General Committee, General Administration Department, Government of Bihar, Patna.
4. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.
5. The Caste Scrutiny Committee, Government of Bihar, Patna.
6. The District Magistrate, Patna.
7. The Circle Officer, Patna Sadar, Patna.
8. The State Election Commission through its Secretary, Veer Chand Patel Marg, Sone Bhawan, Patna, Bihar
9. The Commissioner, State Election Commission, Bihar, Veer Chand Patel Marg, Sone Bhawan, Patna.
10. The Joint Commissioner, State Election Commission, Bihar, Veer Chand Patel Marg, Sone Bhawan, Patna
11. Vikram Sah, son of Nagendra Sah @ Nagendra Prasad, Resident of Nehru Tola, Patna City, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. R.S. Pradhan, Sr. Advocate Mr. Ranjeet Choubey, Advocate Mr. Jainendra Pradhan, Advocate
For the State	:	Mr. H.S. Sundaram, AC to SC-8
For the S.E.C.	:	Mr. Amit Shrivastava, Advocate Mr. Girish Pandey, Advocate
For the Respondent	:	Mr. Ravi Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 13-11-2019

Petitioner in the present case is seeking the



following reliefs:-

“I. For issuance of an appropriate writ in the nature of CERTIORARI for quashing/setting-aside the order dated 29.10.2018 issued vide Memo No. 14248 under signature of Respondent No. 3 (as contained in Annexure P/14) whereby and whereunder the Respondent No. 3 has decided the caste of the petitioner as Kalwar Baniya on the basis of report of Crime Investigation Department without considering the report of the District Magistrate Lucknow dated 05.09.2018.

II. For issuance of an appropriate writ in the nature of CERTIORARI for quashing/setting-aside the Memo No. 429 dated 16.05.2018 (as contained in Annexure P/8) issued under signature of Superintendent of Police, Crime Investigation Department, Bihar, Patna, which is a table report and the same has been prepared without taking into consideration the documents submitted by the petitioner, which is the report of the Karamchari, Tahsildar of Lucknow Sadar, and the report submitted vide Memo No. 429 dated 16.05.2015 (as contained in Annexure P/8) has been prepared without granting any opportunity of hearing or placing any document in support of the claim of to the petitioner.

III. For issuance of an appropriate writ in the nature of CERTIORARI for quashing/setting-aside the Memo No. 5004 dated 12.08.2017 issued under signature of the Circle Officer (Respondent No. 7) whereby and whereunder he has been pleased to cancel the caste certificate bearing Certificate no. C/17/11121 issued vide Letter No. 16233 dated 29.04.2017.

IV. For issuance of an appropriate writ in the nature of PROHIBITATION restraining the State Election Commissioner (Respondent No. 9) from deciding / hearing the Case No. 50 of 2017 (Vikram Sah Vs. Manoj Kumar @ Manoj Munna Jaiswal) till the disposal of the present writ application.

V. For any other relief/reliefs to which the petitioner deemed entitled into the facts and circumstances of the case.”



It is the case of the petitioner that he belongs to Awadh Baniya Caste which is falling under the Extremely Backward Class and based on a caste certificate granted to him on 29.04.2017, he contested the General Municipal Election, 2017 for Ward No. 67 of Patna Municipal Corporation. He was declared elected but thereafter the private respondent no. 11 lodged a complaint with the Secretary, State Election Commission alleging that the petitioner had filed his nomination on the basis of a forged caste certificate. A notice was issued to the petitioner by the Returning Officer, Patna Municipal Corporation, which according to him, was not served upon him, but, as he got knowledge of the complaint, he appeared before the Returning Officer. It is stated that the Circle Officer is said to have conducted a spot inquiry through the Revenue Karmchari, who in turn took statement of five persons and those five persons are said to have stated that this petitioner belongs to Kalwar Baniya Caste. Accordingly, the Circle Officer vide his letter dated 10.08.2017 requested the Deputy



Development Commissioner, Patna for taking action towards cancellation of Caste Certificate of the petitioner.

It is further case of the petitioner that he filed reply before the Deputy Development Commissioner, Patna and also rushed to the Circle Officer, Patna with a request to keep his recommendation in abeyance, as according to the petitioner, the suggestion given by the Circle Officer to cancel the caste certificate of the petitioner was not based on any cogent evidence. The Circle Officer, thereafter cancelled the caste certificate of the petitioner vide Memo No. 5004 dated 12.08.2017, as contained in Annexure 'P/6' to the writ application.

Learned Senior Counsel submits that the petitioner assailed the cancellation order of the Circle Officer by filing a writ application being CWJC No. 12601/2017 before this court. In course of hearing of the said writ application, this court was informed that the matter has been referred to the Caste Scrutiny Committee for verification.

Learned Senior Counsel submits that at this stage



the Caste Scrutiny Committee constituted by the General Administration Department, Government of Bihar called for a report from the District Administration, Luckhnow. It was necessitated because the petitioner originally belonged to Lukhnow in the State of Uttar Pradesh and and his ancestors had shifted to the State of Bihar few years back but his uncle and other relatives were still living at Luckhnow. While a report from the District Administration, Luckhnow was awaited, the Superintendent of Police, Crime Investigation Department, Bihar submitted a report vide Memo No. 429 dated 16.05.2018 (Annexure 'P/8') which has been assailed in this writ application on the ground inter-alia that the report was prepared without providing any opportunity of hearing to the petitioner and there was no basis in the report to arrive at a conclusion that the petitioner belongs to Kalwar Baniya Caste.

In course of hearing, Mr. Pradhan, learned Senior Counsel representing the petitioner has taken this court through the impugned order as contained in Memo No.



14248 dated 29.10.2018 issued under the signature of Additional Chief Secretary – cum – Chairman, General Committee, General Administration Department. This is the order passed by the General Administration Department by accepting the report of the State Level Scrutiny Committee.

Learned Senior Counsel submits that the impugned order is liable to be set-aside, firstly on the ground that it does not disclose any ground or basis of arriving at a conclusion that the petitioner belongs to Kalwar Baniya Caste. The report of the Crime Investigation Department on which reliance has been placed has vaguely referred to the so-called inquiry/statement of the witnesses and the report of the Circle Officer, Bakhtiyarpur as also the report of the School/College. It also refers to some sale deed of the petitioner but the Crime Investigation Department has while submitting it's report had not provided any opportunity to the petitioner to look into the statement of the witnesses or the report of the Circle Officer. In this



regard, the report of the Crime Investigation Department is completely vague and is based on surmises and conjectures. It is submitted that the report gives a tentative opinion which would be evident from their own stipulation to the effect saying “जाँच से इनकी जाति कलवार बनिया पिछड़ा वर्ग प्रतीत होता है, जो अनुसूची- 2 क्रमांक 20 पर अंकित है।”

Learned Senior Counsel further submits that the another aspect of the matter which is equally important that when a report from the District Administration, Luckhnow had been called for and the said report had already been received saying that the petitioner belongs to ‘Awadh Baniya’ Caste, if at all the Caste Scrutiny Committee was looking for some more materials and evidences in support of the said report of the District Administration, Luckhnow, there was no reason as to why the Caste Scrutiny Committee would not have called upon the District Administration, Luckhnow to provide those basis and the documents based on which the District Administration, Luckhnow had submitted its report. It is



submitted that the order impugned as contained in Annexure 'P/14' has been apparently passed in haste and based on a tentative opinion the petitioner's caste has been declared as 'Kalwar Baniya' Caste.

Learned counsel representing private respondent no. 11 has though opposed the writ application but after having gone through the impugned order, learned counsel has accepted the factual position as appearing from the impugned order in which no material has been referred to substantiate the decision taken by the General Administration Department.

Learned Counsel being unable to demonstrate that the impugned order is based on some cogent materials has submitted that the Caste Scrutiny Committee may consider the matter afresh giving an opportunity to both the parties i.e. the petitioner as well as respondent no. 11 to place all such materials which are in their possession to support their respective case.

Learned counsel for the Bihar State Election Commission as also learned counsel for respondent no. 11



– writ petitioner in CWJC No. 21781/2018 have been heard.

Having heard learned counsel for the parties and on a careful perusal of the records, this court finds that this writ application has to be allowed as it appears from the impugned order contained in Annexure ‘P/14’ that the finding in respect of the petitioner saying that he is ‘Kalwar Baniya’ is not supported by any cogent material. No basis of arriving at such a conclusion has been shown save and except some vague statements taken from the report of the Crime Investigation Department. What are those documents, the descriptions thereof and what are the materials contained in those documents which indicate that the petitioner is ‘Kalwar Baniya’ have not at all been referred to. This court further finds that the District Magistrate, Lucknow had sent a report as contained in Annexure ‘P/13’ to the writ application. In his report, he had informed that the ancestors of this petitioner were the domicile of Lucknow and they belonged to Awadh Baniya Caste. In the opinion of this court, once the report



of the Luckhnow Administration was available with the Crime Investigation Department or the General Administration Department as the case may be, in case they were of the view that some more evidence in support of the said report are required to be called for, the principle of equity, good faith and conscience required that instead of taking a decision in haste they should have requested the District Administration, Lukhnow to send the materials in support of the report. This has not been done and the State Level Scrutiny Committee as also the General Administration Department proceeded to pass the impugned order.

In ultimate analysis of the entire facts and circumstances as also the materials available on the record, this court is of the considered opinion that the impugned orders as contained in Annexure 'P/8', 'P/14' and Memo No. 5004 dated 12.08.2017 issued by the Circle Officer are required to set-aside and those are accordingly set-aside. The matter is remitted to the Caste Scrutiny Committee for a fresh consideration after giving



an appropriate opportunity of hearing to the petitioner as well as respondent no. 11.

Let a final decision in this regard be taken within a period of four months from the date of receipt/production of a copy of this order.

This Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

U			
---	--	--	--

